IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

R.S.A. No. 1460 of 1996
Date of decision March 14, 2007

Girraj Singh

.....Appellant

Versus

Mewa Ram and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINEY MITTAL

Present:- Sh. R. S. Kundu, Advocate
for the appeallant.

Sh. Amit Jain, Advocate
for the respondent.

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Viney Mittal, J (Oral)

The plaintiff is appellant before this Court. He has challenged the judgment and decree of the first appellate Court whereby on an appeal filed by the defendant-Mewa Ram, the judgment and decree of the trial Court were set aside and suit of the plaintiff was dismissed.

Plaintiff-Girraj Singh had filed suit for possession by way of preemption. The aforesaid claim was made by the plaintiff on the ground that he is co-sharer of the suit land and as such, had statutory right to purchase the same. Consequently, he claimed preemption qua the sale deed dated August 13, 1990 executed by Smt. Virwati-defendant No.2 in favour of Mewa Ram-defendant No.1.

The suit was decreed by the trial Court.

The vendee-defendant filed an appeal before the appellate Court. During the course of appeal, provisions of the Punjab Preemption Act were amended and right of preemption on the basis of

co-sharership was abolished. Taking note of the aforesaid amendment, the appellate Court allowed the appeal filed by the vendee-defendant and set aside the judgment and decree of the trial Court and consequently, dismissed the suit filed by the plaintiff.

The present appeal had been filed in the year 1996. During the pendency of the present appeal, the Apex Court in the case of **Shyam Sunder and another Vs. Ram Kumar and another,** JT 2001 (6) SC 94 has held that amendment made in the Preemption Act is to be operative prospectively and if the decree of the trial Court is prior to the amendment, then the said amendment was not to affect the aforesaid decree.

Since the appellate Court has decided the appeal filed by the vendee merely by taking into consideration the amendment made in the Punjab Preemption Act, therefore, in view of the law laid down by the Apex Court in Shyam Sunder's case, the judgment and decree of the first appellate Court cannot be legally sustained.

Consequently, the present appeal is allowed. The judgment and decree of the first appellate Court are set aside. The matter is remanded back to the first appellate Court to re-decide the controversy between the parties in accordance with law.

The parties shall appear before the appellate Court on May 18, 2007.

A copy of the order be given dasti on payment of usual charges.

(VINEY MITTAL)
JUDGE

March 14, 2007
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